

ISSUE DATE: June 12, 2000

DOCKET NO. E,G-002/PA-99-1031

ORDER APPROVING MERGER, AS CONDITIONED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company for Approval to Merge
with New Century Energies, Inc.

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PROCEDURAL HISTORY

On July 28, 1999 Northern States Power Company (NSP) filed a petition for approval of a merger between itself and New Century Energies, Inc. (NCE). On August 3, 1999 the Commission issued a notice that it would hold a docket management conference in the case on August 12.

On August 11, 1999 Koch Petroleum Group, L.P. filed a petition to intervene in the case.

On August 12, 1999 Chair Garvey convened and presided at the docket management conference. After the conference, the following persons filed procedural comments: NSP, Minnesotans for an Energy-Efficient Economy, the Izaak Walton League of America (IWLA), Minnesota SEED (Sustainable Energy for Economic Development), and the Residential and Small Business Utilities Division of the Office of the Attorney General (OAG).

On August 26, 1999 Great River Energy filed a petition to intervene in the case.

On September 8, 1999, the Commission issued its NOTICE AND ORDER FOR HEARING, directing that a contested case proceeding, conducted by an Administrative Law Judge (ALJ) designated by the Office of Administrative Hearings (OAH), would be held regarding the petition. The Commission noted that the ultimate issue to be considered in the course of the contested case proceeding was whether the proposed merger is consistent with the public interest. The Commission directed the parties to the contested case proceeding to address these and any other issues relevant to the public interest determination the Commission must make.

Proceedings Before the ALJ

The ALJ reviewed petitions to intervene in the contested case proceeding and granted intervenor status, pursuant to Minn. Rules, Part 1400.6200, to the following: Community Environmental Coalition (CEC), Dairyland Power, Energy Cents Coalition, Great River Energy, Intertribal Council on Utility Policy, Koch Petroleum, Legal Services Advocacy Project, Minnesota Energy Consumers (MEC), Minnesota Power, Southern Minnesota Municipal Power Agency, and Wisconsin Public Service Corp. The Minnesota Department of

Commerce (DOC or the Department) and the Office of Attorney General, Residential and Small Business Utilities Division (OAG) intervened as of right.

The ALJ received public comments both written and oral and conducted public hearings to receive public comment at the following locations and dates: January 6, 2000 in St. Paul, Minnesota, with video conference connecting locations in Winona, Red Wing, Pipestone, and Moorhead, Minnesota; January 10, 2000 in Mankato, Minnesota; January 11, 2000 in St. Cloud, Minnesota; and January 12, 2000 in Minneapolis, Minnesota.¹

Evidentiary hearings were initially scheduled for the week of January 24 through January 28, 2000, but during December 1999 and January 2000, the ALJ received four separate stipulation agreements resolving issues related to the proposed merger. These stipulations were between NSP and each of the following four parties: CEC, MEC, the DOC, and the OAG. Because all the major parties had reached stipulations with NSP, the ALJ issued a revised schedule: a January 24, 2000 hearing to enter into the record the NSP Petition and testimony, the DOC testimony, the four stipulations, and public comments, and a January 28, 2000 hearing to receive the parties' brief presentations regarding the stipulations.

On January 24, 2000, the pre-filed testimony of eighteen witnesses was admitted into evidence, including the prefiled testimony of Edward J. McIntyre (NSP), Paul E. Pender (NSP), Fredric C. Stoffel (NSP), Thomas J. Flaherty (NSP), Judy M. Pofert (NSP), Anne E. Hanson (NSP), John D. Winter (NSP), William H. Hieronymous (NSP), Richard J. Gilbert (NSP), Ricardo R. Astoria (NSP), Dale V. Lusti (DOC), Sundra Bender (DOC), Michael J. Michaud (DOC), Michelle A. St. Pierre (DOC), Marcus D. Gross (DOC), Nancy A. Campbell (DOC), Eilon Amit (DOC), and Kari L. Valley (DOC). In addition, the stipulations described above and public comments were admitted into the record.

At the hearing on January 28, 2000, an agreement between NSP and GRE, Dairyland Power and SMMPA and an agreement between NSP, Energy Cents Coalition, Legal Services Advocacy Project and St. Paul Neighborhood Energy Consortium were admitted into evidence for informational purposes. Commission approval of these agreements was not requested. NSP, DOC, OAG, MEC and CEC made brief presentations relating to their respective stipulations. These parties then responded to questions from the Commissioners, the Commission Staff and the ALJ.

The ALJ's Report and Recommendation

On February 28, 2000, the ALJ filed his Findings of Fact, Conclusions and Recommendation.

On March 10, 2000, NSP filed a clarifying statement on behalf of all the active parties to the proceeding: DOC, the OAG, MEC, CEC, Great River Energy, Dairyland Power, Southern Minnesota Municipal Power Agency, Energy Cents Coalition, and the Legal Services Advocacy Project. The parties stated that they did not intend to file exceptions to the ALJ's Report.

¹ The ALJ summarized the public comments in Paragraph 5 of his report, Findings of Fact, Conclusions and Recommendation, filed with the Commission February 28, 2000.

On March 20, 2000, Robert Carney filed a document entitled “Exceptions to the ALJ Report.” As a participant in these proceedings and not a party², however, Mr. Carney is not entitled to file exceptions to the ALJ’s Report and the filing is properly viewed as the comments of a participant. See Minn. Rules, Part 1400.5100, subp.7 and 7829.2700 subp. 1. Although Mr. Carney’s comments were filed late in this process, the Commission will accept them since the lateness of the comments has prejudiced no party.

On March 31, 2000, NSP and the Department filed replies to Mr. Carney’s filing.

On April 18, 24, and 25, 2000, Mr. Carney filed additional comments.

Commission Deliberations

The Commission met on April 27, 2000 to consider this matter.

FINDINGS AND CONCLUSIONS

I. THE PROPOSED MERGER OF NSP AND NCE

The NSP-NCE Merger Agreement anticipates the merger will be a tax-free, stock-for-stock exchange for shareholders of both companies and will be accounted for as a pooling of interests. The Merger Agreement proposes to create the combined company through a three-step process:

- First, NSP’s electric and gas utility assets (the assets serving Minnesota, North Dakota, and South Dakota) will be “spun-down” into a new utility operating company subsidiary (referred to herein as New NSP Utility).
- Second, NCE will merge into NSP. NSP will be the surviving corporate entity in the merger and will be renamed Xcel Energy Inc. (Xcel).
- Third, Xcel will register with the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act of 1935 (PUHCA), and will hold the combined assets and operations of NSP and NCE, including those of New NSP Utility.

Upon completion, holders of NCE’s common stock will receive 1.55 shares of the new holding company’s stock for each share of NCE stock. NSP shareholders will receive one share of the new stock for each share of NSP’s common stock.

The operating utility subsidiaries (such as New NSP Utility and NSP-Wisconsin) will hold the

² A “party” is a person by or against whom a proceeding before the Commission is commenced or a person permitted to intervene in the proceeding. Minn. Rules, Part 7829.0100, subp.14. Mr. Carney did not request intervenor status in this matter and has simply filed comments without becoming a party. As such, he is a “participant” in these proceedings as defined in Minn. Rules, Part 7929.0100, subp.13.

electric and gas assets used to provide utility service while another subsidiary, “Service Company,” will provide services (legal, environmental, internal audit, etc.) for the operating companies.

NSP stated that the proposed NSP/NCE merger is to be accounted for as a pooling-of-interests, because the merger meets all of the criteria prescribed for a pooling. NSP will request its independent accountants to issue an accounting opinion prior to the consummation of the merger indicating that the pooling method is appropriate and will provide a copy of the opinion in a compliance filing after the closing of the merger.

The Merger Agreement provides that upon closing of the merger, James J. Howard, currently the Chairman and Chief Executive Officer of NSP, will serve as Chairman of the Board of the new holding company, Xcel, Inc. and that Wayne H. Brunetti, currently President and Chief Operating Officer of NCE, will serve as President and Chief Executive Officer. Mr. Howard will remain in the Chairman position until the first anniversary of the closing of the merger at which point Mr. Brunetti will succeed Mr. Howard as Chairman of the Board of Xcel. At the Commission’s April 27, 2000 hearing, Mr. Brunetti stated that he has already purchased a home in Minnesota and that Xcel’s headquarters will be in Minnesota.

II. THE ALJ’S FINDINGS AND RECOMMENDATION

The ALJ specifically acknowledged the significance of the merger of NSP and NCE. The ALJ stated that this was a clearly significant merger that would affect Minnesotans for many years to come. Regarding the process engaged in by the parties to review the proposed merger, the ALJ found that the process had been informed, thorough, and aggressive. The ALJ observed that the concessions extracted from NSP in the stipulations protect the public to a degree probably beyond what would have been imposed if the hearing had proceeded.

For his own part, the ALJ thoroughly reviewed the proposed merger as modified by the stipulated agreements of the parties, assessing the resulting proposal for consistency with the public interest. The ALJ evaluated the merger, as modified, with respect to the ratepayer protections it offered, the merger’s impact on competition, various environmental concerns, and the Commission’s regulatory oversight of the resulting operations.

The ALJ found the stipulated concessions reasonable and approved them. In addition, the ALJ proposed a supplemental condition regarding CO₂ emissions. The ALJ recommended that NSP be required to submit, within six months of merger approval, a report to the Commission detailing its 1990, 1997, 1998, and 1999 CO₂ emissions from NSP-owned generating facilities used to provide utility service and develop (in cooperation with the parties to this proceeding) strategies to mitigate CO₂ and other greenhouse gas emissions from such facilities. The ALJ recommended that NSP be required to do so within one year of merger approval.

The ALJ concluded that the merger proposed by NSP, as modified by the conditions of the Stipulations and the additional above-stated CO₂ emissions requirement, is consistent with the public interest.

Accordingly, the ALJ recommended that the Commission issue an Order 1) determining that NSP's proposed merger with NCE, as modified by the stipulation agreements and the CO₂ emissions requirement, is consistent with the public interest; 2) approving the stipulation agreements; and 3) approving the merger with such stipulation agreements and CO₂ emissions requirement.

III. COMMENTS REGARDING THE ALJ'S FINDINGS AND RECOMMENDATION

No party filed exceptions to the ALJ's Report. However, NSP and the stipulating parties filed a clarification letter and a participant in the proceeding, Mr. Robert Carney, filed comments on the ALJ's Report.

A. Parties' Clarification Letter

In a letter filed with the Commission by NSP on March 10, 2000, NSP and all the other active parties to the proceeding (DOC, the OAG, MEC, CEC, Great River Energy, Dairyland Power, Southern Minnesota Municipal Power Agency, Energy Cents Coalition, and the Legal Services Advocacy Project) stated that they did not intend to file exceptions to the ALJ's Report. In addition, the parties clarified the following points:

- In its stipulation agreement with NSP, the Community Environmental Coalition committed not to seek to impose further conditions upon the merger.
- An insignificant mathematical error was identified by the DOC in Finding of Fact No. 17. The total merger savings should be \$326 million, not \$336 million. (This same error appeared in the joint Proposed Findings of Fact submitted to the ALJ).
- NSP's acceptance of the ALJ's additional merger condition regarding strategies for mitigation of greenhouse gases is intended to respond to a letter to NSP from Commissioner Garvey, also dated February 28, 2000.

The Commission acknowledges these clarifications.

B. Mr. Carney's Comments

In comments responding to the ALJ's Report, Mr. Carney raised seven specific objections, arguing, in general, that the proposed merger was clearly not in the public interest and that the entire proceedings should be sent to the Minnesota Legislature for its review.

First, Mr. Carney argued that the DOC has not properly represented the interests of ratepayers and the public and, consequently, the Commission cannot conclude that the proposed merger is consistent with the public interest.

The Commission notes that the record compiled by the Department in this proceeding (including the stipulation it entered into with NSP) speaks for itself regarding the vigor with which the Department has executed its responsibilities. Moreover, the Commission has the

responsibility and authority to examine the entire record (contributed from whatever source) to determine whether NSP has borne its burden to show that the merger is consistent with the public interest.

In this case, important conditions to NSP's proposed merger have been added via stipulations with several parties besides the Department: the OAG, MEC, and the CEC. In addition, several parties and participants, representing various vantage points on the public interest, have formally communicated that they have no objections to the ALJ's Report: DOC, the OAG, MEC, CEC, Great River Energy, Dairyland Power, Southern Minnesota Municipal Power Agency, Energy Cents Coalition, and the Legal Services Advocacy Project.

Based on the Commission's own review of the entire record, including the additional conditions or clarifications agreed to at the Commission's hearing on this matter and noted below in Section IV of this Order, the Commission finds no need for further proceedings, as advocated by Mr. Carney. The record is fully adequate to determine the ultimate issue in this matter, i.e. whether NSP has borne its burden to show that the merger is consistent with the public interest.

Second, Mr. Carney objected to the merger on the grounds that the Commission would lose its ability to protect the interest of Minnesota customers by effectively regulating utility rates.

After examining the merger as modified by the stipulations, however, the Commission finds that despite the merger the Commission will retain authority over pricing, assignment and allocation of revenues and expenses that flow through to Minnesota consumers, thereby maintaining the ability to ensure just and reasonable rates. Even after the merger, the Commission will have access to all pertinent records of the company and its subsidiaries in order to monitor cost and revenue allocations and assignments and will continue to be required to seek approval of affiliated agreements.

In addition, NSP has agreed to waive its legal right to assert federal preemption as a defense to Commission decisions disallowing Service Company or the Joint Operating Agreement costs due to imprudence (including disallowance based on used and useful evaluations) and any adjustments to cost allocations with respect to the Service Company. Finally, NSP has agreed to hold ratepayers harmless in the event that such a Commission adjustment of expenses or revenues is later found to be preempted by FERC or the SEC.

Third, Mr. Carney asserted that because the utilities to be merged are large, comparably sized, and discontiguous, the merger is so unique that the Legislature must review it and possibly revise Minnesota's governing law to deal with it. Mr. Carney stated that a fundamental difference between the currently proposed merger and the many mergers of geographically separated non-utilities referred to by the ALJ is that, according to Mr. Carney, the market is rejecting the current merger on economic grounds. This market rejection, Mr. Carney asserted, shakes the foundation of the assertion that the proposed merger is consistent with the public interest.

The Commission finds that geographic separation of the merging utilities is not unique to this merger. See, e.g. NSP-Gas' acquisition of Black Mountain Gas in Arizona and the Minnegasco mergers resulting in a series of out-of-state parent companies: Arkla, Inc.,

NorAm Energy, Corp., Houston Industries Incorporated, and now Reliant Energy located in Houston, Texas. More fundamentally, Mr. Carney has not shown how geographic separation is detrimental to Minnesota ratepayers (other than the asserted negative impact upon Commission regulatory authority, addressed previously). And although NSP's stock has declined, this can occur for many reasons unrelated to merger. Finally, offsetting Mr. Carney's assertion that the market is rejecting the merger on economic grounds is the fact that NSP shareholders themselves have approved this merger.

Fourth, Mr. Carney argued that the recent drop in NSP stock value and other various factors show that the rate reductions and price freeze promised in the merger documents are uncertain and speculative. He further argued that the conditions designated to allow NSP to seek a base rate increase will be quickly met and render the rate freeze of questionable value.

Based on its review, however, the Commission finds that the parties' stipulations regarding the rate reductions and price freeze, coupled with the additional clarifying provisions regarding the conditions for departing from the freeze adopted in this Order, adequately ensure that ratepayers will experience tangible ratepayer benefit from the rate reductions and price freeze for a reasonable duration.

Fifth, Mr. Carney stated that if the correct standard for evaluating this merger is that it will cause "no net harm," the Commission should re-open the proceedings and require NSP to show that it meets the "no net harm" standard. Mr. Carney noted that the ALJ did not refer to the "no net harm" standard and suggested that the ALJ's failure to specifically articulate and evaluate the merger by that standard was error.

The Commission finds that the ALJ applied the correct standard. Under Minnesota law, the Commission is to approve the merger upon a showing that it is "consistent with the public interest." The applicable statute states:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission thereto the commission shall investigate, with or without public hearing, and in case of a public hearing, upon such notice as the commission may require, and if it shall find that the proposed action is **consistent with the public interest** it shall give its consent and approval by order in writing. . . . (Emphasis added.)

Minn. Stat. § 216B.50.

To determine if the proposed transaction is "consistent with the public interest", perceived detriments or concerns must be weighed against perceived benefits to the public. If the perceived detriments do not outweigh the perceived benefits, the merger is deemed to be "consistent with the public interest." The statute thus does not require that proposed mergers affirmatively benefit ratepayers or the public or that they otherwise promote the public interest. They cannot contravene the public interest, however, and must be shown to be compatible with it.

The Commission has consistently evaluated mergers of energy utilities using the standard prescribed by Minn. Stat. § 216B.50 (consistent with the public interest) and has done so in this case.³

Sixth, Mr. Carney argued that the Commission has no jurisdiction to consider this merger pursuant to Minn. Stat. § 216B.50 because the merger is of a type not contemplated by the legislature when it adopted Minn. Stat. § 216B.50. Consequently, Mr. Carney argued, the Commission should refer the matter to the legislature for its review.

The Commission notes that in support of his proposed reading of the statute, Mr. Carney cited the comparative brevity of Minn. Stat. § 216B.50, relied on the fact that the statute lists mergers after more routine transactions, and asserted that the statute limited Commission review to mergers between public utilities currently operating in the state.

These arguments are not persuasive. Brevity of a statute and the placement of the term “merge” within the statute do not authorize the Commission to alter the clear meaning of the statute, carving an exception for the NSP-NCE merger.

Likewise, the assertion that the statute only authorizes Commission review of mergers between two in-state utilities is not well taken. The statute only requires that one of the merging public utilities be “operating in this state.” NCE is thus prohibited from merging with or consolidating with a public utility operating in Minnesota (such as NSP) without first obtaining Commission authority. Moreover, the Commission has, on several occasions, reviewed proposed mergers or acquisitions between in-state and out-of-state utility companies under Minn. Stat. § 216B.50 and the legislature has never disputed the Commission’s authority to do so by amending the statute to specifically prohibit such action by the Commission.

The Commission’s is the common sense interpretation as well. Since there is no statutory language providing for (let alone requiring) legislative review of a merger where one party is an out-of-state utility, removal of the current merger from Commission jurisdiction (as urged

³ See, e.g. In the Matter of the Proposed Merger of Minnegasco, Inc. With and Into Arkla, Inc., Docket No. G-008/PA-90-604, ORDER APPROVING MERGER AND ADOPTING AMENDED STIPULATION WITH MODIFICATIONS (November 29, 1990) at page 5; In the Matter of a Joint Petition by Minnegasco, a Division of NorAm Energy Corp., NorAm Energy Corp., Houston Industries Incorporated, Houston Lighting & Power Company, and HI Merger, Inc. for Approval of the Transaction Pursuant to the Agreement and Plan of Merger Among Houston Industries Incorporated, Houston Lighting & Power Company, HI Merger, Inc. and NorAm Energy Corp., Docket No. G-008/PA-96-950, ORDER APPROVING MERGER SUBJECT TO CONDITIONS (February 24, 1997) at page 4; and In the Matter of UtiliCorp United Inc.’s Request for Approval of a Proposed Merger Between UtiliCorp and St. Joseph Light & Power Company, Docket No. G-007, 011/PA-99-700, and In the Matter of UtiliCorp United Inc.’s Request for Approval of a Proposed Merger Between UtiliCorp and the Empire District Electric Company, Docket No. G-007, 011/PA-99-890, ORDER APPROVING MERGERS SUBJECT TO CONDITIONS (December 7, 1999) at page 5.

by Mr. Carney) would not necessarily result in legislative review and could result in no review at all. The Commission would not assume such a legislative intent without clear legislative direction which, as indicated, is clearly absent here.

Seventh, Mr. Carney asserted that merger of NSP's and NCE's balance sheets could adversely impact Minnesota ratepayers and the public interest of citizens of Minnesota. Mr. Carney cited one instance of such adverse impact: that NSP's pension assets may be paid to employees in other parts of the country if the proposed merger is approved and the economic multiplier effect of these dollars not being spent in Minnesota. Mr. Carney recommended that the Commission obtain a legal or accounting opinion as to the resulting dollar value loss to the citizens of Minnesota.

Mr. Carney also suggested that there might be other merger-related balance sheet issues that would negatively affect the public interest. Mr. Carney called for further study to determine whether there were other adverse impacts associated with the merged balance sheet.

The Commission finds that Mr. Carney's concern about the merger's impact on pension funds does not warrant rejection or delay of the proposed merger. The Commission notes that no pensioners expressed this concern. In addition, the duties of employers and the rights of NSP pensioners regarding disbursement of pension funds are governed by federal law: the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. The record in this matter provides no basis to believe that the merged entity would violate its responsibilities under ERISA or the Internal Revenue Code. It appears that any future claims by pensioners regarding alleging misuse of pension funds may be adequately addressed in Federal District Court.

As to Mr. Carney's suggestion that further review might reveal other adverse impacts resulting from the merger of the companies' balance sheets, the Commission finds the suggestion speculative and without foundation. After carefully reviewing the record and noting the extensive input from the several diverse parties to this matter, the Commission agrees with the ALJ that the merger has been subjected to an informed, thorough, and aggressive review. As a consequence, the Commission finds no basis for Mr. Carney's request to defer decision on the proposed merger to allow further review.

Eighth, at the hearing Mr. Carney noted that when considering mergers the Commission is required by Minn. Stat. § 216B.50 to take into consideration the reasonable value of the securities to be merged. He asserted that if the exchanged Xcel stock is worth less than NSP stock, NSP stockholders (25% of whom are Minnesota residents) would be adversely affected and this would not be in the public interest.

The Commission has complied with the requirements of Minn. Stat. § 216B.50 and has taken into consideration all the factors listed in that statute, including the reasonable value of the securities to be merged. In so doing, the Commission is not required to give (nor does it give) conclusive weight to the securities value factor. While stockholder concerns are part of the public interest equation, they do not control it. In fact, the Commission may appropriately take notice that stockholders, having a vote on the matter and the ability to sell their stock if dissatisfied, have much greater opportunity to protect their interests regarding proposed merger than ratepayers. Moreover, the Commission notes that a large majority (almost 2 to 1) of

NSP's stockholders appear to have weighed the merger and found it overall beneficial, voting to approve it. In addition, the Minnesota Utility Investors and the NSP stockholders who participated in the public hearings on this merger uniformly recommended Commission approval.

IV. ADDITIONAL CONDITIONS

In response to Commissioner Garvey's proposal (submitted at the ALJ's January 28, 2000 hearing) to condition the merger on NSP's agreement to submit strategies for mitigating CO₂ emissions and other greenhouse gases from any and all Xcel Energy facilities, the ALJ recommended that, in addition to the parties' stipulated conditions, the Commission adopt an additional condition of approval: that NSP be required, within six months of approval of the merger, to submit a report to the Commission detailing its 1990, 1997, 1998, and 1999 CO₂ emissions from NSP-owned generating facilities used to provide utility service and, within one year of merger approval, develop strategies (in cooperation with the parties to this proceeding) to mitigate CO₂ and other greenhouse gas emissions from such facilities. NSP specifically accepted this condition in its March 10, 2000 filing.

The Commission finds that this condition is reasonable and will adopt it.

In addition, after much discussion at the Commission's hearing on this matter, several additional conditions and/or clarifications were agreed to by NSP and NCE and all the other parties to this matter. The Commission finds that these conditions and/or clarifications are reasonable and will adopt them as further modifications of the NSP-NCE merger. The conditions and clarifications from the Commission's April 27, 2000 meeting are as follows:

1. NSP will be required to demonstrate that any necessary rate increase during the rate freeze period is caused by an event outside the company's control and unrelated to the merger; NSP will be required to make this showing as part of its pre-filing requirement under Section III, C of the Stipulation Agreement between NSP and the Department of Commerce.
2. In any general rate case filed in the next ten years, NSP must demonstrate that the projected merger savings for the proposed test year have been achieved for those portions of the business subject to rate regulation at the time of the general rate case filing; if the savings have not been achieved, the Commission may impute the projected savings shortfall into revenues.
3. Pursuant to Section III, C of the Stipulation Agreement between NSP and the Department of Commerce, the parties have 30 days after the submission of NSP's rate case filing to object to the filing on the basis that it does not meet the terms of this Stipulation. In the event that a party files an objection with the Commission, NSP agrees, that for the sole purpose of Section III, NSP waives its rights under Minn. Stat. § 216B.16, subd. 3 to the establishment of interim rates within a sixty day period from the date for filing for approval of a rate increase, provided that interim rates are established within 90 days of NSP's rate case filing.

4. The preemption waiver and hold harmless provisions of the NSP-Department stipulation apply to Commission decisions regarding disallowance of Service Company or Joint Operating Agreement costs due to imprudence (including disallowance based on used and useful evaluations), and any adjustments to cost allocations with respect to the Service Company; in the event that such a Commission adjustment of expenses or revenues is later found to be preempted by the Federal Energy Regulatory Commission (FERC) or Securities Exchange Commission (SEC), NSP would take those actions necessary, consistent with federal law, to hold Minnesota ratepayers harmless from an increase in rates beyond those approved by the Commission in the preempted decision;
5. Within 60 days of the closing date of the merger, NSP shall file with the Commission, and serve on all parties, the accounting entries transferring NSP Minnesota utility assets to New NSP Utility, and other transfers of NSP Minnesota assets to other divisions/subsidiaries as a result of the merger; and
6. NSP shall include the CAIFI index, as an additional measurement of service quality, in its quarterly reports on outages and interruptions.

V. COMMISSION ANALYSIS AND ACTION

The Commission is obligated and authorized to review the proposed merger pursuant to Minn. Stat. § 216B.50 and, if it finds that the merger is consistent with the public interest, approve it. The Commission has considered, finds appropriate, and hereby adopts the following conditions to the proposed merger:

- 1) all conditions contained in the stipulations that NSP entered into with the Department, the OAG, MEC and the CEC⁴;
- 2) the CO₂ mitigation condition added by the ALJ; and
- 3) the six additional clarifications and conditions listed above in Section IV of this Order.

Benefits

The Commission finds that the merger of NSP and NCE, as modified and conditioned above, achieves the following benefits:

- provides significant ratepayer benefits and protections (rate decrease and rate freeze);
- assures continued Commission jurisdiction over NSP's rates;
- provides reasonable assurance that ratepayers will be adequately protected from corporate structure changes resulting from the proposed merger;

⁴ Copies of these stipulations are attached and incorporated as part of this Order. The stipulations are between NSP and the Department (Attachment 1), NSP and the OAG (Attachment 2), NSP and MEC (Attachment 3) and NSP and CEC (Attachment 4).

- is unlikely to adversely impact wholesale competition;
- adequately addresses, through stipulations related to generation cost disclosure, distributed generation aggregation, and a customer buyback tariff, concerns about impacts to competition at the retail level;
- assures provision of additional information to all parties in the forthcoming debate on retail access and assures that new technologies will be able to interconnect with NSP;
- assures the provision of studies and filings that address concerns regarding the Commission's regulatory effectiveness regarding environmental issues such as wind turbine development, conversion of coal plants to natural gas, and demand-side management programs;
- assures that NSP will contribute additional low-income assistance, an added \$300,000 per year to the Energy Assistance Program in each of the four years following the date the merger transaction closes as a below-the-line contribution (borne by the shareholders) and will work with the Department and others on how to best use the annual contribution; and
- promises a reasonable start to addressing CO₂ mitigation issues.

Potential Detriments

At the same time, the Commission has considered the concerns (potential harms) examined by the ALJ and raised by the parties and the participant, Mr. Carney.⁵ The Commission finds that the merger of NSP and NCE, as modified and conditioned in this Order, adequately addresses these concerns.

On the basis of the entire record created in this matter, then, and taking into consideration the reasonable value of the property, plant, and securities to be merged, and having weighed potential benefits of the merger against potential detriments, the Commission finds that the merger of NSP and NCE, as modified and conditioned by this Order, is consistent with the public interest.

Accordingly, the Commission will approve the merger thus modified and conditioned.

⁵ In his Report at pages 6- 26, the ALJ addressed 1) possible inadequacy of the promised rate decrease, rate freeze, earnings reporting, and treatment of merger costs; 2) potential negative impact upon service quality, low-income assistance, and transmission reliability; 3) potential negative impact upon the Commission's regulatory oversight ; 4) potential detriment to competition and environmental issues. In his comments, Mr. Carney raised concerns about harms in several areas, enumerated and addressed above in this Order at pages 6 to 11. Concerns raised by the parties are identified and addressed in their stipulations with NSP. See attached.

Finally, the Commission notes that Minn. Rules, Parts 7825.3100 to 7825.4400 impose certain filings and proceedings regarding rate changes, including rate reductions such as NSP has agreed to in these proceedings. At the same time, Minn. Rules, Part 7825.4600 allows the Commission to waive these rate change requirements on written application for good cause shown. The Commission finds that the parties' stipulations constitute such a request and, to the extent that the cited rules apply to NSP's rate reduction, the Commission finds good cause to waive them. Specifically, the Commission finds that the rate reductions have received adequate public review in the course of this proceeding and the public interest is served by expediting these rate reductions. Accordingly, the Commission will waive the referenced requirements.

ORDER

1. The Commission adopts the administrative Law Judge's report and recommendations as modified by the six additional clarifications and conditions listed above in Section IV.
2. The merger of Northern States Power Company (NSP) and New Century Energy, Inc. (NCE), as conditioned by the parties' stipulations (copies attached), the CO₂ mitigation condition, and the six additional clarifications and conditions listed above in Section IV, is approved.
3. The procedural, notice and filing requirements of Minn. Rules, Parts 7825.3100 to 7825.4400, to the extent that they apply to NSP's rate stipulated reductions in this matter, are hereby waived.
4. NSP shall comply with all commitments made under the Merger Agreement as well as the conditions to the merger adopted in this Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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